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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DEVAS MULTIMEDIA PRIVATE
9 LTD.,

10 Petitioner,

C18-1360 TSZ

11 v.

MINUTE ORDER

12 ANTRIX CORP. LTD.,

Respondent.

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Respondent Antrix Corp. LTD.'s ("Antrix") Motion to Dismiss and
16 Opposition to Petition to Confirm Foreign Arbitral Award, docket no. 13, is DENIED as
17 follows:

18 (a) Antrix is subject to this Court's personal jurisdiction pursuant to the
19 Foreign Sovereign Immunities Act ("FSIA"). 28 U.S.C. § 1330(b). The parties do
20 not dispute that personal jurisdiction exists as a matter of statute, but Antrix
21 maintains that it is entitled to additional, constitutional due process protections
22 requiring a minimum contacts analysis. It is not. Antrix is not a "person" for due
23 process purposes because it is effectively controlled by the Government of India.
Both the U.S. Supreme Court and the Ninth Circuit Court of Appeals have
assumed without deciding that foreign states are "persons" entitled to due process.
See Republic of Argentina v. Weltover, Inc., 504 U.S. 607, 619 (1992); *Altmann v.*
Republic of Austria, 317 F.3d 954 (9th Cir. 2002). Where the state exercises
sufficient control over a foreign corporation, the due process clause does not apply
and statutory personal jurisdiction under the FSIA is all that is required. *First Inv.*
Corp. of Marshall Islands v. Fujian Mawei Shipbuilding Ltd., 703 F.3d 742, 752

1 (5th Cir. 2012); *GSS Group Ltd. v. Nat'l Port Auth.*, 680 F.3d 805, 813-14 (D.C.
2 Cir. 2012); *Frontera Res. Azer. Corp. v. State Oil Co. of the Azer. Rep.*, 582 F.3d
3 393, 400 (2d Cir. 2009); *TMR Energy Ltd. v. State Property Fund of Ukraine*, 411
4 F.3d 296 (D.C. Cir. 2005) (concluding that state control over a private fund meant
5 the fund was not a person entitled to due process protection and that personal
6 jurisdiction was established by subject matter jurisdiction and service under 28
7 U.S.C. § 1330(b)). The Court finds these cases persuasive. Antrix is wholly-
8 owned by the Government of India. See Antrix's Corporate Disclosure Statement,
9 docket no. 10. The Government of India exercises "plenary control" over Antrix
10 in a principal-agent relationship. *TMR*, 411 F.3d at 301-02. Antrix is "under the
11 administrative control of [India's] Department of Space" ("DOS") and is the
12 "commercial arm" of a related government agency, the Indian Space Research
13 Organization ("ISRO"). Second Declaration of Elizabeth A. Hellmann, docket no.
14 24, Ex. 45. The Government of India itself characterizes Antrix as a "corporate
15 front of DOS/ISRO" and "as a virtual corporation housed within DOS/ISRO for
16 the purposes of staffing, premises and all organizational support." *Id.*, Ex. 48 at 1.
17 Antrix has no satellites, satellite launch vehicles, transponders, or electromagnetic
18 spectrum of its own, but rather markets assets owned and controlled by ISRO and
19 DOS. *Id.* at 1-2. Most of Antrix's commercial activities are financed by the
20 government of India. *Id.* at 6. Much of Antrix's leadership is appointed by the
21 government of India. *Id.*, Ex. 47. The Court has jurisdiction under FSIA.

12 (b) The Court declines to dismiss this action based on the doctrine of
13 forum non-conveniens. Petitioner has no adequate alternative forum in which to
14 execute on property Antrix may own in the United States. See *TMR*, 411 F.3d at
15 303 ("[O]nly a court of the United States . . . may attach the commercial property
16 of a foreign nation located in the United States."). Active investigations and
17 proceedings against Petitioner and its officers and agents in India—including both
18 civil and criminal proceedings—raise additional concerns about the neutrality of
19 proceedings in India. Given the availability of a temporary stay under the
20 Convention on the Recognition and Enforcement of Foreign Arbitral Awards of
21 June 10, 1958 (the "New York Convention"), the Court concludes that dismissal
22 would unfairly prejudice Petitioner and is unwarranted.

18 (c) The Court exercises its discretion to stay this action pursuant to
19 Article VI of the New York Convention pending the resolution of Antrix's
20 challenge to the underlying award in India's courts. See *Matter of Arbitration of*
21 *Certain Controversies Between Getma International and Republic of Guinea*, 142
22 F. Supp. 3d 110 (D.D.C. 2015) (citing factors enumerated in *Europcar Italia,*
23 *S.p.A. v. Maiellano Tours, Inc.*, 156 F.3d 310 (2d Cir. 1998)). The matter is
STAYED for one (1) year from the date of this Order. On or before April 15,
2020, the parties shall file a joint status report regarding the litigation in India and
whether the Court should lift or extend the stay.

1 (d) The Court defers a decision on as to whether any security must be
2 posted as a condition of the stay now imposed by the Court. The parties shall
3 address the amount of security, if any, the Court should require during the stay
4 under the New York Convention. Petitioner shall file a brief of not more than ten
5 (10) pages on or before April 26, 2019. Respondent shall file a responsive brief of
6 not more than ten (10) pages on or before May 10, 2019. No replies shall be filed.

7 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
8 record.

9 Dated this 16th day of April, 2019.

10 William M. McCool
11 Clerk

12 s/Karen Dews
13 Deputy Clerk